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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

In the Matter of)
) ADMINISTRATIVE ORDER
) DIRECTING COMPLIANCE
UNION PACIFIC RAILROAD)
) WITH REQUEST FOR ACCESS
Respondent) Docket No. 10-96-0082-CERCLA
)
Proceeding Under Section 104(e))
of the Comprehensive Environmental)
Response, Compensation, and)
Liability Act, 42 U.S.C. § 9604(e))
)
)

I. JURISDICTION

1.1 The following Administrative Order is issued
to Union Pacific Railroad Company ("UPRR") pursuant to the
authority vested in the President of the United States by Section
104(e)(5) of the Comprehensive Environmental Response,
Compensation, and Liability Act of 1980, as amended ("CERCLA"),
42 U.S.C. § 9604(e)(5), and Section 300.400(d) of the National
Oil and Hazardous Substances Pollution Contingency Plan ("NCP"),
40 C.F.R. § 300.400(d), which authority was delegated to the
Administrator of the Environmental Protection Agency ("EPA") on
January 23, 1987, by Executive Order 12580 and further
redelegated to the Regional Administrator of EPA Region 10 by EPA

1 Delegation Nos. 14-14-A and 14-14-B and further redelegated to
2 the Director and the Cleanup Unit Managers of the Office of
3 Environmental Cleanup.

4
5 II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

6 2.1 Respondent owns a railroad right-of-way that
7 traverses the Bunker Hill Superfund Site.

8 2.2 Pursuant to Section 105 of CERCLA, 42 U.S.C.
9 § 9605, EPA placed the Bunker Hill Superfund Site on the National
10 Priorities List ("NPL"), 40 C.F.R. Part 300, Appendix B, by
11 publication on September 8, 1983, in the Federal Register, 48
12 Fed. Reg. 40658 (September 8, 1983).

13 2.3 The Site has been damaged by over 100 years of
14 mining and 65 years of smelting activity, as well as a variety of
15 other natural and man-made events. Heavy metals have been
16 released into soils, surface water and groundwater throughout the
17 Site to varying degrees through a combination of occurrences
18 including airborne particulate dispersion, alluvial deposition of
19 tailings through various mechanisms, including the flooding of
20 extensive floodplain area within the Site, and other contaminant
21 movement from both on-Site and off-Site sources.

22 2.4 EPA has issued two Records of Decision which
23 select remedial actions which address contamination throughout
24 the Site.

25 2.5 Union Pacific Railroad has entered into a Consent
26 Decree with EPA pursuant to which Union Pacific Railroad has
27 agreed to perform a portion of the remedial action for this Site.
28 Section X of the Consent Decree provides EPA access to property

1 controlled by Respondent for the purposes of conducting any
2 activity related to the Consent Decree. Section X of the Consent
3 Decree further provides that the United States retains all of its
4 access authorities and rights under CERCLA.

5 2.6 EPA is performing some remedial actions for this
6 Site, a portion of which requires access to the Union Pacific
7 railroad right-of-way. This includes, but is not limited to,
8 excavation and realignment of Bunker Creek to reduce further
9 migration of contamination during large storm events. Access to
10 the Union Pacific railroad right-of-way is also needed to perform
11 remedial actions which require the conveyance of materials
12 including mine water, sludge and tailings to appropriate disposal
13 locations. Access to the Union Pacific railroad right-of-way may
14 also be required to implement other remedial actions for this
15 Site.

16 2.7 The remedial actions selected in the two Records
17 of Decision were selected to address an actual or threatened
18 release of hazardous substances into the environment. Such
19 release may present an imminent and substantial endangerment to
20 the public health or the environment.

21 2.8 Based on the information available to it, EPA has
22 determined that it is necessary to perform the remedial actions
23 set forth in the RODs to protect public health and the
24 environment.

25 2.9 EPA has provided Union Pacific Railroad Company
26 with information about the proposed remedial actions on the
27 railroad right-of-way and is continuing to provide Union Pacific
28 Railroad Company an opportunity for input regarding such actions.

1 Union Pacific Railroad Company has refused to cooperate in
2 providing EPA unrestricted access to the Union Pacific railroad
3 right-of-way for the purposes of performing remedial actions.
4

5 III. DETERMINATION

6 3.1 Based on the FINDINGS and CONCLUSIONS set forth
7 above and the entire administrative record which is available for
8 review at EPA Region 10, it is hereby determined that there is a
9 reasonable basis to believe: (a) that there may be a release or
10 a threat of release of a hazardous substance, pollutant, or
11 contaminant within the meaning of Section 104(e) of CERCLA, 42
12 U.S.C. § 9604(e); (b) that access to the Union Pacific Railroad
13 right-of-way is needed in order to take necessary response
14 actions; and (c) that EPA's requests for such access have been
15 denied.

16 3.2 Access to the Union Pacific Railroad Right-of-Way
17 by EPA, the State of Idaho and their contractors is urgently
18 required to conduct necessary response actions.
19

20 IV. ORDER

21 4.1 Respondent shall afford EPA, the State of Idaho
22 and their officers, employees, and designated representatives,
23 including the U.S Army Corps of Engineers and their contractors
24 and subcontractors, full and unrestricted access to the railroad
25 right-of-way for the purpose of conducting remedial actions that
26 EPA deems necessary to address the threat to human health and
27 environment posed by releases or threatened releases of hazardous
28

1 substances into the environment for the duration of EPA's
2 remedial activities at the site.

3 4.2 Such activities shall include all remedial actions
4 set forth in the two RODs issued by EPA pertaining to this Site
5 and shall include, but not be limited to the following
6 activities:

7 (a) UPRR shall provide access to two surface crossings
8 within the Bunker Creek corridor, south of the Central
9 Impoundment Area ("CIA") to allow the continuation of
10 Fund-financed cleanup work at the Bunker Hill Superfund
11 Site. The first crossing is located just west of the
12 Central Treatment Plant ("CTP") and allows access for Plant
operation and maintenance, and provides access to the
Central Impoundment Area. The second crossing is south of
the slag pile, farther west of the first crossing and allows
alternate access to the Central Impoundment Area;

13 (b) UPRR shall provide access for the future
14 installation and maintenance of 004/Sweeney subsurface
15 pipelines which convey Smelter Complex contaminated runoff,
lined storage pond lines to the Central Treatment Plant,
mine water conveyances (to CIA and lined storage pond(s)),
CTP appurtenances and sludge pipelines;

16 (c) UPRR shall provide access for the maintenance of
17 previously installed 004/Sweeney subsurface pipelines which
18 convey Smelter Complex contaminated runoff, lined storage
19 pond lines to the Central Treatment Plant, mine water
conveyances (to CIA and lined storage pond(s)), CTP
appurtenances and sludge pipelines;

20 (d) UPRR shall provide future road access for the
21 conveyance of mine waste tailings from Smelterville Flats at
22 two or more locations on or across the railroad right-of-way
for final disposal on the Central Impoundment Area for the
duration of the Smelterville Flats/Central Impoundment Area
remedial actions;

23 (e) UPRR shall provide 25 feet of permanent access
24 around the southern perimeter of the Central Impoundment
25 Area (from the toe) to perform remediation and for future
dike maintenance;

26 (f) UPRR shall provide access for the excavation and
27 removal of contaminated material including the establishment
28 of haul routes along the railroad right-of-way and placement
of the Bunker Creek alignment (100 year flood design) within
the railroad right of way and future access for its
maintenance; and

1 (g) UPRR shall, upon notice from EPA, provide access
2 for additional response actions within the Site pursuant to
3 CERCLA.

4 4.3 This Order for Access shall be binding on all agents,
5 heirs, successors, and assigns of Respondent. In the event of
6 any conveyance by Respondent, or Respondent's heirs, successors,
7 and assigns, of an interest in Respondent's right-of-way,
8 Respondent or Respondent's agents, heirs, successors, and
9 assigns, shall convey the interest so as to ensure continued
10 access by EPA, the State of Idaho and their representatives for
11 the purpose of carrying out the activities pursuant to this Order
12 for Access. Any such conveyance shall restrict the use of such
13 property so that the use will not interfere with activities
14 undertaken pursuant to this Order for Access. Respondent or
15 Respondent's agents, heirs, successors, and assigns shall notify
16 EPA in writing at least thirty (30) days before any conveyance of
17 an interest in property where an access area is located and shall
18 notify the other parties involved in the conveyance prior to the
19 transfer of the provisions of this Order.

20 V. PENALTIES FOR NONCOMPLIANCE

21 5.1 Respondent is hereby advised that, pursuant to
22 Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5), a court may
23 assess civil penalties of up to \$25,000 per day for each day that
24 Respondent fails to comply with this Order for Access or any part
25 hereof.
26
27
28

1 VI. RESERVATION OF RIGHTS/OTHER CLAIMS

2 6.1 Nothing herein shall alter the terms of the
3 Consent Decree, CIV 95-0152-N-HLR, entered by the U.S. District
4 Court for the District of Idaho on September 12, 1995.

5 6.2 By issuance of this Order EPA assumes no liability
6 for injuries or damages to persons or property resulting from any
7 activities conducted pursuant to this Order.

8
9 VII. OPPORTUNITY TO CONFER

10 7.1 Respondent has had an opportunity to review and
11 discuss the terms of this Administrative Access Order with EPA
12 prior to its issuance. In addition, on or before September 10,
13 1996, Respondent may request a conference with EPA.

14 7.2 If a conference is held, Respondent may present
15 any information, arguments, or comments regarding this Order.
16 Regardless of whether a conference is held, Respondent may submit
17 such information in writing on or before September 10, 1996.
18 This conference is not an evidentiary hearing, does not
19 constitute a proceeding to challenge this Order, and does not
20 give Respondent a right to seek judicial review of this Order.
21 Requests for a conference, or any written submittal under this
22 paragraph, shall be directed to Sean Sheldrake at Mail Stop
23 ECL-111, 1200 Sixth Avenue, Seattle, Washington 98101.

VIII. EFFECTIVE DATE OF ADMINISTRATIVE ORDER AND
NOTICE OF INTENT TO COMPLY

8.1 This Administrative Order for Access shall become effective on September 10, 1996. At that time, Respondent shall notify EPA, in writing, of Respondent's irrevocable intent to comply with this Order. In the event that Respondent fails to provide such notice, Respondent shall be deemed not to have complied with the terms of this Order for Access.

IT IS SO ORDERED:

Randall F. Smith

RANDALL F. SMITH
Director
Office of Environmental Cleanup

September 3, 1996
Date

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